



4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHW-2018-0046]

Executed Memorandum of Understanding Assigning FHWA's Environmental Review Responsibilities to the State of Arizona under the Surface Transportation Project Delivery Program

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice announces the execution of the Memorandum of Understanding (MOU) and approval of the application from the Arizona Department of Transportation (State) requesting participation in the Surface Transportation Project Delivery Program (Program). It also summarizes and responds to the comments received on the draft MOU.

FOR FURTHER INFORMATION CONTACT: Neel Vanikar, Office of Project Development & Environmental Review, Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590, (202) 366-2068, neel.vanikar@dot.gov.

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SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the Federal Register's
home page at <http://www.archives.gov> and the Government Printing Office's database at
<http://www.access.gpo.gov/nara>.

Background

Section 327 of Title 23, United States Code (23 U.S.C. 327), allows the Secretary
of the DOT, to assign, and a State to assume, the Secretary's National Environmental
Policy Act of 1969 (NEPA) responsibilities and all or part of the Secretary's
responsibilities for environmental review, consultation, or other actions required under
any other Federal environmental law with respect to one or more Federal-aid highway
projects. The FHWA is authorized to act on behalf of the Secretary with respect to these
matters.

The State has submitted application materials requesting to participate in this
Program. The FHWA has reviewed these application materials, which include public and
Agency comments on the application, and has determined them complete. The FHWA

and the State developed a draft MOU outlining how the State will implement the Program and how FHWA will oversee the State's implementation as required by 23 U.S.C. 327. The FHWA published a notice in the Federal Register on February 11, 2019, at 84 FR 3275, providing the public an opportunity to comment on the preliminary decision to approve the State's application and public and Agency comments on the MOU.

The FHWA received 51 comments in response to the Federal Register Notice. Nine comments were in support of the application and the State's readiness for this assignment. An additional 42 comments expressed concern for the State's ability to assume FHWA's responsibilities for a particular project or generally for the Program. The comments in opposition mentioned concerns for the State's ability to manage the environmental review process for the Interstate 11 (I-11) and Sonoran Corridor Tier II Environmental Impact Statements (EIS).

The FHWA has considered these comments and offers the following responses. The FHWA notes that by signing the MOU and the State accepting the jurisdiction of the Federal courts in cases that involve the compliance, discharge, and enforcement of any responsibility of the Secretary assumed by the State pursuant to the MOU, the State has taken on both the responsibility and liability for meeting all environmental laws under NEPA. Under the Program, the State will make the project-level decisions in relation to NEPA on highway projects within the State; however, other Federal agencies will continue to make decisions respective to their own project-level responsibilities. In the State's application, the State describes its procedures, manuals, and a Quality Assurance/Quality Control plan that will guide the State in fulfilling its NEPA

responsibilities under the MOU. Furthermore, FHWA will oversee the State's compliance with the terms of the MOU through auditing and monitoring. The FHWA will make the results of all audits available to the public through notices in the Federal Register.

With the execution of the MOU, the State becomes responsible for project-level environmental review decisions for projects, including those not excluded from assignment, for which review began prior to this date. The FHWA excluded the Tier 1 EIS studies for I-11 and the Sonoran Corridor from assignment to the State since they are both nearing completion. However, FHWA assigned the responsibilities for the Tier-2 EISs for these corridors because the State has the capacity and ability to complete the EISs without FHWA's involvement in the process.

The FHWA Arizona Division, in consultation with FHWA Headquarters, has reviewed all the comments received and determined that the State's application meets all regulatory requirements. Pursuant to the MOU, FHWA assigns and the State assumes FHWA's environmental review responsibilities under NEPA, and all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal-aid highway projects within the State. The executed MOU specifies the assignments and assumptions of NEPA responsibilities and scope of environmental review, consultation and other activities. This notice in the Federal Register makes the executed MOU available to the public.

A copy of the proposed MOU may be viewed on the online docket, as described above, or may be obtained by contacting FHWA or the State at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR 771.101-139; 23 CFR 773.109; 40 CFR 1507.3; and 49 CFR 1.85.

Nicole R. Nason,
Administrator,
Federal Highway Administration.

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